the Courts in this country to the effect that unless good cause is otherwise shown a discharge under this section should amount to an acquittal.

My decision to this effect in *Public Prosecutor v. Suppiah Pather*[1] does not appear to have been reported, but in that case I made reference to the three following reported cases *Public Prosecutor v. Mat Zain bin Yahaya*[2]; *Goh Oon Keow & anor. v. Rex*[3] and *Seet Ah Ann v. Public Prosecutor*[4].

In addition to these reported cases there are numerous cases in which, acting in revision, I have altered orders from a simple discharge to discharges amounting to an acquittal.

Following all these decided cases, I therefore vary the order made by the learned President in this case, and substitute therefor an order that the appellant be discharged of and from the charges, such discharge amounting to an acquittal.

Appeal allowed.

LIM KWAN KEE v. KWAN SEE (m.w.)

[A. C. J. (Wilson J.) August 29, 1955]

[K. L.—Civil Appeal No. 17 of 1955]

Administrator—Claim for agreed share in estate of deceased—Whether the share was an annuity or not—Liability for income tax—Income Tax Ordinance.

The appellant in this case was the administrator of the estate of his deceased father. By an agreement between the appellant and the respondent, it was agreed that in consideration of the respondent agreeing to Letters of Administration to be granted to the appellant, the respondent should be entitled to 1/6 share in the estate of the deceased. The estate of the deceased was entitled to a tribute and the appellant duly paid the respondent her 1/6 share of the tribute up to February 1954. The respondent sued the appellant for the sum of $566.04 in respect of the tribute received by the appellant for the months of March to June 1954. The appellant claimed that he had paid income tax on the tribute paid by him to the respondent during the years 1952 and 1953 and he claimed to set off the sum of $782 which he had paid for income tax. It was argued that the 1/6 share of the respondent was an annuity and therefore the income tax was payable by her. The learned Magistrate held that the share was not an annuity and gave judgment for the respondent.

Held: the learned Magistrate was right in holding that the payment made to the respondent did not constitute an annuity and therefore the appeal must be dismissed.

Cases referred to:—

(1) *Brooke v. Price* (1917) A.C. 115.

(2) *In re Shaw; Smith v. Shaw* (1916) P. 47.

(3) *In re Janes' Settlement; Wasmuth v. Janes* (1918) 2 Ch. 54.

MAGISTRATE'S CIVIL APPEAL.

Bentley for the appellant.

P. G. Lim (Miss) for the respondent.

Cur. Adv. Vult.

Wilson J. : —The appellant was the only son and sole beneficiary of Lim Song at the date of his death and, indeed, in the statement of defence he claims to be the sole beneficiary and to be entitled to the tribute payable to the estate of the deceased father. The deceased died on the 26th June, 1941 and by an agreement in writing dated the 24th July, 1941 between the appellant and the respondent it is recited that the appellant denied that the respondent was the lawful widow of the deceased. It seems to me obvious that the respondent was claiming to be the lawful widow of the deceased. No evidence as to this was called at the trial, and in any case it seems to me to be immaterial as she certainly is not a beneficiary of the estate of the deceased. Prior to the date of the agreement the respondent had entered a caveat in the proceedings by which the appellant applied for letters of administration of the estate of the deceased father. In the agreement it was provided that the respondent should withdraw her caveat and agree to letters of administration being granted to the appellant. In return it was stated that the respondent should be entitled to one-sixth share in the estate of the deceased. It is to be noted that at the time of the agreement there was no provision in the laws of Malaya for the payment of income tax. Up to and including the month of February, 1954, the appellant paid to the respondent the one-sixth share of the tribute payable to her under the terms of the agreement. The respondent sued the appellant for the sum of $566.04 in respect of the tribute received by the appellant for the months of March to June, 1954. This was not disputed by the appellant who, however, claimed that he had paid income tax on the tribute paid by him to the respondent during the years 1952 and 1953. The appellant claimed that the amount of income tax so paid on such tribute amounted to $782, and he claimed to set off the sum of $782 against the sum claimed in the action by the respondent.

The sole question for decision in this case is whether such income tax is payable by the appellant or the respondent. It has been argued before me and before the Court below that the one-sixth share of the respondent was an annuity. In support of this contention I have been referred to *Brooke v. Price*[1]. In my opinion that was an entirely different case inasmuch as the payment under consideration therein was the payment of an annual specific sum. That in this case payments were to be made monthly, it seems to me

to be immaterial but the amounts to be paid under the agreement were not fixed sums and had to be ascertained month by month under the terms of the agreement. I am satisfied that the learned Magistrate was right in holding that the payments made to the respondent did not constitute an annuity. Similarly in the case of *In re Shaw, Smith v. Shaw*[2], it was held that a fixed sum of £300 per annum to be paid to the defendant was an annuity and that the administratrix was entitled to deduct and retain the income tax which became payable half yearly. That case seems to me to have no bearing on the facts of the case with which I am now concerned inasmuch as I hold that payments to be made to the respondent under an agreement did not constitute an annuity.

I do not think the decision in the case of *In re Janes' Settlement, Wasmuth v. Janes*[3] carries us any further.

I agree with the learned Magistrate that the respondent is entitled to judgment for the amount claimed and for interest and costs set out in the decree, and this appeal will be dismissed with costs.

Appeal dismissed.

PUBLIC PROSECUTOR v. P. LOUIS

[A. Cr. J. (Thomson J.) September 1, 1955]

[Ipoh — Criminal Revision No. 34 of 1955]

Emergency Regulations, 1951, reg. 17EA(5) — Removing restricted article from a food restricted area — Meaning of synthetic cloth.

In this case the accused was convicted on a charge of removing a restricted article namely cloth from a food restricted area in contravention of reg. 17EA(5) of the Emergency Regulations. The cloth in question consisted of "printed spun rayon muslin" and the Deputy Public Prosecutor referred the matter to the High Court on the question whether the cloth in question was a restricted article within the meaning of the Regulations.

Held: rayon can be regarded as synthetic cloth and therefore comes within the definition of a restricted article in the Regulations.

Case referred to:—

(1) *Brierley v. Philips* (1947) 1 All E.R. 269, 270.

CRIMINAL REVISION.

Thomson J. : — The accused in this case was convicted in the Magistrate's Court at Sungei Siput on a charge of removing a restricted article "to wit, two yards of cloth" from a food restricted area in contravention of Regulation 17EA(5) of the Emergency Regulations. He pleaded guilty and was convicted and fined $20. The cloth in question was confiscated.

After his conviction, it was ascertained that the cloth in question consisted of what is called "Printed Spun Rayon Muslin" and, as the Deputy Public Prosecutor was in some doubt as to whether such a substance was a restricted article within the meaning of the Regulation, he invited me to consider the matter in revision.

In Regulation 17EA as originally enacted the expression "restricted article" was defined as meaning a long list of specified articles which had little if anything in common with each other including "cloth and canvas".

As regards "cloth", if it had not been distinguished from "canvas", this definition would have been reasonably intelligible and I do not think that in practice any Magistrate or indeed any other person would have experienced difficulty in deciding whether an article was or was not cloth.

Legal Notification No. 169 of 1954, however, substituted for the word "cloth" in the definition of "restricted article" a list of types of cloth. It is not necessary to quote that list of types of cloth because some time later by Legal Notification No. 545 of 1954 it was replaced by the following: —

"(f) cloth of the following descriptions and clothing made therefrom, namely —

(i) pliable plastic or synthetic cloth, synthetic sheeting or material including imitation thereof;

(ii) cellular cloth;

(iii) drill of all colours; and

(iv) dyed shirting and sheeting."

As far as the present case is concerned, I do not think there can be any doubt that printed spun rayon muslin falls within that definition. The *Encyclopaedia Britannica* says that rayon is frequently called artificial silk and describes it as follows :—

"Rayon is the generic name of filaments made from various solutions of modified cellulose by pressing or drawing the cellulose solution through an orifice and solidifying it in the form of a filament or filaments, by means of some precipitating medium."

In all the circumstances, I think that such a substance can safely be regarded as synthetic cloth.

That concludes the point before me but I feel compelled to observe that Regulation 17EA as it now stands places an almost impossible burden on Magistrates who after all are not chemists or persons engaged in dealing in textiles. The definition does not include all substances which fall within the ordinary meaning of cloth. If it did, although its terms might be regarded as somewhat pleonastic, there would be little difficulty. But it does not include all varieties of cloth. For example, the question of whether material which is dyed or coloured is included would appear to depend